

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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AMICA MUTUAL INSURANCE COMPANY  
As Subrogee of Harry T. Coene & Mary L. Coene,  
  
Plaintiff,

**NOTICE OF  
REMOVAL**

v.

Civil Action No.:

WHIRLPOOL CORPORATION,  
  
Defendant.

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PLEASE TAKE NOTICE that Defendant Whirlpool Corporation ("Whirlpool"), by its undersigned counsel, hereby gives notice pursuant to 28 U.S.C. §§ 1441 and 1446, of the removal to this Court of the action commenced against it in the Supreme Court of the State of New York, County of Livingston, identified below. In support of this removal, Whirlpool states as follows:

**I. THE ACTION**

1. Whirlpool is named as the defendant in a suit filed in the Supreme Court of the State of New York, County of Livingston, styled *Amica Mutual Insurance Company as subrogee of Harry T. Coene & Mary L. Coene, Plaintiff, Against Whirlpool Corporation, Defendant*, Index No. 974-2013.

**II. SERVICE**

2. The Summons and Complaint were served on Whirlpool on December 16, 2013. Removal was effected within thirty (30) days of service of the Complaint on Whirlpool, and therefore, removal is timely. 28 U.S.C. § 1446(b).

### **III. PLEADINGS AND NOTICE TO STATE COURT**

3. A copy of the Summons and Complaint are attached hereto as **Exhibits A and B**. See also, Index of Documents Filed with the Supreme Court of the State of New York, Livingston County, **Exhibit C**. Contemporaneous with the filing of this Notice of Removal, a copy of this Notice of Removal is being served on counsel for Plaintiff with notice of filing via U.S. mail, first class. A copy of this Notice of Removal with notice of filing is also being sent to the Livingston County Clerk's Office for filing.

### **IV. STATEMENT OF STATUTORY BASIS FOR JURISDICTION**

4. This Action is within the original jurisdiction of the U.S. District Court pursuant to 28 U.S.C. § 1332. This statute provides, in pertinent part, that "[t]he district courts shall original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between ... citizens of different States." 28 U.S.C. § 1332(a)(1). As discussed below, this Action satisfies both statutory requirements.

#### **A. The parties are citizens of different states.**

5. Plaintiff alleges in its Complaint that it is a liability insurance company authorized to do business in the State of New York and having an office for the doing of business in the County of Monroe and State of New York. Plaintiff's Complaint, ¶ 1 (hereinafter "Compl."). Plaintiff further alleges that plaintiff's subrogors are individuals residing in the County of Livingston and State of New York. Compl. ¶ 2. Plaintiff correctly alleges that Whirlpool is a corporation organized in the State of Delaware. Comp. ¶ 4. Whirlpool has its principal place of business located at 2000 North M-63, Benton Harbor, Michigan. *Id.* at ¶ 2. Therefore, diversity of citizenship exists.

**B. The amount in controversy exceeds \$75,000.**

6. Plaintiff seeks monetary relief (including interest, legal fees, and costs) for property damage resulting from a fire at the Coene residence located at 864 Leicester Road, Caledonia, New York 14423-9610. Compl. ¶ 6. Plaintiff alleges that a dehumidifier manufactured by Whirlpool was defective, and caused the fire at the Coene residence. Id. Plaintiff alleges that its monetary damages are approximately \$100,000.00, which exceeds the \$75,000.00 amount in controversy threshold. Compl. ¶ 11. Therefore, the amount in controversy is satisfied, and jurisdiction in this Court is proper.

7. In the event that any question arises as to the propriety of this removal, Whirlpool requests the opportunity to submit briefs and be heard at oral argument in support of its position that removal is proper.

WHEREFORE, Whirlpool respectfully requests that this Court assume jurisdiction over this matter and that no further proceedings be held in the Livingston County Superior Court.

DATED: January 10, 2014

**DAMON MOREY LLP**

By: /s/ Hedwig M. Auletta  
Hedwig M. Auletta, Esq.  
Attorneys for Defendant  
Whirlpool Corporation  
The Avant Building-Suite 1200  
200 Delaware Avenue  
Buffalo, New York 14202  
Telephone: (716) 856-5500  
[hauletta@damonmorey.com](mailto:hauletta@damonmorey.com)

# EXHIBIT A

STATE OF NEW YORK

COUNTY OF LIVINGSTON

SUPREME COURT

AMICA MUTUAL INSURANCE COMPANY  
as subrogee of Harry T. Coene & Mary L. Coene,

Plaintiff,

vs.

WHIRLPOOL CORPORATION

Defendant.

Plaintiff designates  
Livingston County as the  
place of trial

The basis of the venue  
is plaintiff's subrogee's  
residence

SUMMONS

Index No. 974-2013

Plaintiff does business at  
Fairport, NY  
County of Monroe

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*To the above named Defendant:*

**YOU ARE HEREBY SUMMONED** and required to appear in the Livingston County Supreme Court, 2 Court Street, Geneseo, NY 14454 by serving an answer\* to the annexed complaint upon plaintiff's attorney at the address stated below, or if there is no attorney, upon the plaintiff at the address stated above, within the time provided by law as noted below; upon your failure to so answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of this action.

DATED: November 5, 2013  
Rochester, NY



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Ernest D. Santoro, Esq.  
**ERNEST D. SANTORO, ESQ., P.C.**  
*Attorneys for Plaintiff*  
290 Linden Oaks, 1<sup>st</sup> Floor  
Rochester, New York 14625  
(585) 419-8060

TO: WHIRLPOOL CORPORATION  
211 Hilltop Road, MD2113  
St. Joseph, MI 49085

NOTE:

(1) if this summons is served by its delivery to you personally within the County of Livingston, you must answer within 20 days after such service; or

(2) if this summons is served by delivery to any person other than you personally, or is served outside the County of Livingston, or by publication , or by any means other than personal delivery to you within the County of Livingston, you are allowed 30 days after service is complete within which to answer.

\* You need not physically go the court to serve an answer.

# **EXHIBIT B**

STATE OF NEW YORK  
COUNTY OF LIVINGSTON SUPREME COURT

AMICA MUTUAL INSURANCE COMPANY  
as subrogee of Harry T. Coene & Mary L. Coene,

Plaintiff,

vs.

COMPLAINT

WHIRLPOOL CORPORATION

Index No.

Defendant.

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Plaintiff, by its attorneys, Ernest D. Santoro, Esq., P.C., complaining of the defendant, herein alleges:

1. That at all times hereinafter mentioned, the plaintiff was a liability insurance company authorized to do business in the State of New York and having an office for the doing of business in the County of Monroe and State of New York.
2. That at all times hereinafter mentioned, the plaintiff's subrogors are individuals residing in the County of Livingston and State of New York.
3. That on July 7, 2012 there existed a homeowner's policy of insurance issued by the plaintiff to its insureds, Harry T. Coene and Mary L. Coene, with regard to property located at 864 Leicester Road, Caledonia, New York 14423-9610.
4. That the defendant, upon information and belief, is a corporation organized in the State of Delaware but authorized to do business as a foreign corporation in the State of New York.



5. That prior to July 7, 2012 plaintiff's insureds purchased a Whirlpool dehumidifier manufactured by or on behalf of the defendant having model number AD70USS0.

6. That on July 7, 2012 the aforesaid dehumidifier malfunctioned causing a fire within the premises of 864 Leicester Road, Caledonia, County of Livingston and New York with resultant property damage.

7. That as a result of the aforesaid loss plaintiff paid certain amounts with regard to damages to the property and contents as well as incidental expenses incurred as a result of the fire.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST THE  
DEFENDANT, PLAINTIFF HEREIN ALLEGES:**

8. That plaintiff repeats and reiterates all that contained in paragraphs one through seven as though fully set forth herein.

9. That the aforesaid fire and resultant damage was caused by and through the negligence of the defendant.

10. That the negligence of the defendant was in failing to act reasonably in designing, testing, manufacturing, selling, inspecting, marketing and/or servicing of the aforesaid dehumidifier.

11. As a result of the aforesaid plaintiff made payment to its insureds and accordingly became subrogated to their claim against the defendant in an amount of approximately \$100,000.00.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST THE  
DEFENDANT PLAINTIFF HEREIN ALLEGES:**

12. Repeats and reiterates paragraphs one through 11 as though fully set forth herein.

13. That the defendant held its product out to be fit and safe for the use for which it was intended and advertised.

14. That at all times herein, the plaintiff's subrogors were using the aforesaid dehumidifier for the purpose and in the manner intended.

15. That plaintiff's subrogors could not have discovered the breach by the defendant or realized its danger.

16. That defendant's breach of warranty was a substantial factor in bringing about the damage to plaintiff's subrogors.

17. As a result of the aforesaid plaintiff made payments to its insureds and accordingly became subrogated to their claim against the defendant in an amount of approximately \$100,000.00.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST THE  
DEFENDANT PLAINTIFF HEREIN ALLEGES:**

18. Repeats and reiterates paragraphs one through 17 as though fully set forth herein.

19. Upon information and belief, the defendant sold its dehumidifier located at plaintiff's subrogors residence in a defective condition.

20. That at the time of the fire alleged above the dehumidifier was being used for its intended and reasonably foreseeable purpose.

21. That the aforesaid dehumidifier was not reasonably safe and in fact was defective.

22. That the aforesaid defect was a substantial factor in causing plaintiff's subrogors' damages.

23. That because of the aforesaid, defendant is strictly liable in damages to the plaintiff.

24. As a result of the aforesaid plaintiff made payment to its insureds and accordingly became subrogated to their claim against the defendants in an amount of approximately \$100,000.00.

WHEREFORE, plaintiff demands judgment against defendant as follows:

- A. On the first cause of action in the amount of approximately of \$100,000.00 plus interest from July 7, 2012;
- B. On the second cause of action in the amount of approximately \$100,000.00 plus interest from July 7, 2012;
- C. On the third cause of action in the amount of approximately \$100,000.00 plus interest from July 7, 2012;
- D. All together with the costs and disbursements of this action.

DATED: November 5, 2013  
Rochester, NY



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Ernest D. Santoro, Esq.

ERNEST D. SANTORO, ESQ., P.C.

*Attorneys for Plaintiff*

290 Linden Oaks, 1<sup>st</sup> Floor

Rochester, New York 14625

(585) 419-8060

# EXHIBIT C

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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AMICA MUTUAL INSURANCE COMPANY  
As Subrogee of Harry T. Coene & Mary L. Coene,

Plaintiff,

v.

INDEX OF DOCUMENTS FILED  
WITH THE SUPREME COURT  
OF THE STATE OF NEW YORK,  
LIVINGSTON COUNTY

Civil Action No.:

WHIRLPOOL CORPORATION,

Defendant.

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Pursuant to Rule 81 of the Local Rules of Civil Procedure for the United States District Court for the Western District of New York, the following is an index of documents filed in the Supreme Court of the State of New York for the County of Livingston:

- a. Summons, Index No. 974-2013;
- b. Complaint.
- c. Affidavit of Service filed on December 31, 2013.

DATED: January 10, 2014

**DAMON MOREY LLP**

By: /s/ Hedwig M. Auletta  
Hedwig M. Auletta, Esq.  
Attorneys for Defendant  
Whirlpool Corporation  
The Avant Building-Suite 1200  
200 Delaware Avenue  
Buffalo, New York 14202  
Telephone: (716) 856-5500  
[hauletta@damonmorey.com](mailto:hauletta@damonmorey.com)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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AMICA MUTUAL INSURANCE COMPANY  
As Subrogee of Harry T. Coene & Mary L. Coene,  
  
Plaintiff,

**AFFIDAVIT OF  
SERVICE**

v.

Civil Action No.:

WHIRLPOOL CORPORATION,  
  
Defendant.

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STATE OF NEW YORK     )  
COUNTY OF ERIE        ) ss:

Debra M. Ledwin, being duly sworn deposes and says that:

1. I am not a party to the action, am over 18 years of age and reside in Alden, New York.

2. On January 10, 2014, I served a true copy of the foregoing Notice of Removal with exhibits by depositing same enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State addressed to:

Ernest D. Santoro, Esq.  
Ernest D. Santoro, Esq., P.C.  
290 Linden Oaks, 1st Floor  
Rochester, New York 14625

*/s/ Debra M. Ledwin*

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Debra M. Ledwin

Sworn to before me this  
10th day of January, 2014.  
*/s/ Sharon M. Conway*

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Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 6/30/15